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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 173

DONALD J. PINCIOTTI, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR REHEARING ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Denial of Certiorari in This Case Sanctions a Different Standard of Sixth Amendment Constitutional Right Between State Courts and the Federal Court Below.

"Equal Justice Under Law" is surely a difficult, even impossible, goal. Nothing in life is equal. But this Court has gone to superhuman lengths to move in that

direction. If "equal" in law has any real meaning, this petitioner seeks an equal measurement of his constitutional rights under the Sixth Amendment; "equal" to those announced in the Fifth Circuit case of *Barton* v. *United States,* 263 F. 2d 894 (5th Cir. 1959).

The Fifth Circuit held the defendant's right to confront and cross-examine witnesses against him was essential to a fair trial. But in the case at bar the conviction was had solely upon unsworn hearsay, where the real witness sat in the courtroom as a co-defendant and did not testify (Petition for Certiorari, pp. 4-5), was never cross-examined.

Still, nothing could be clearer than the decision in *Pointer* v. *Texas,* 380 U.S. 400 (1965), where it was said within this calendar year (p. 405):

> ". . . the right of confrontation and cross examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal."

This Petitioner respectfully prays that what was there held to be "obligatory upon the States" (380 U.S. at 403), may also be made obligatory upon the Sixth Circuit in the case at bar. A federal court should be no less zealous than State courts in upholding constitutional rights announced by this Court. Indeed, this Court in the *Pointer Case* (P. 407) expressly required "the same standards" for confrontation in State and federal courts.

Equal justice cries out for equal treatment with Pointer.

How can it be emphasized? Neither a conspiracy, nor knowledge of one, was shown, or even testified to,

against this Petitioner, by hearsay or otherwise. No exceptional circumstance warrants this most exceptional decision.

The case at bar is ruled in clear and clarion tones by *Douglas* v. *Alabama,* 380 U.S. 415 (1965), where this Court again preserved the right of cross-examination, here so thoroughly ignored. This Petitioner prays equal justice with Douglas.

Particularly apt here seems the concurring opinion of Mr. Justice Stewart in *Pointer,* 380 U.S. at 1071, noting, with appropriate quotation and reference, that the right to cross-examine witnesses is among "fundamental guaranties of life and liberty."

Can't this Petitioner be heard to say that co-defendant Maison, the only real witness against him, never took the stand to testify? was never cross-examined? but gave his unsworn testimony through one who admitted she never met or spoke with this Petitioner? knew about him only through Maison? Perhaps the case is individually unimportant, but this Court has always acted to preserve basic constitutional rights.

Barton, Pointer, Douglas—three specific decisions.

Can equal justice be so very far away with nearby guides like these?

Equal justice is really far beyond human attainment, but a shining ideal, toward which this Court has taken giant strides. We earnestly pray its reconsideration of this one simple question, the first point in the Petition for Certiorari.

CONCLUSION

It appears that different standards of constitutional right are enforced in State and federal courts. It is respectfully prayed that this Court grant certiorari to review the judgment below and resolve the conflict with applicable decisions of this Court.

In the event that a full hearing on this matter may seem unnecessary, it is prayed the Court vacate the judgment with appropriate directions for consideration of this issue by the Court of Appeals, which has not heretofore been asked to rule on it.

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CERTIFICATE OF COUNSEL

I certify that the foregoing Petition is filed in good faith and not for purpose of delay. Three copies have been delivered to the Solicitor General of the United States, Department of Justice, Washington, D.C.

RUSSELL MORTON BROWN

November 3, 1965